

Message Text

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PAGE 01 STATE 069655
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DRAFTED BY JUSTICE:BRISTAU:AD
APPROVED BY L/M:KEMALMBORG
L - MR. SANDLER (DRAFT)
USIA/GC - MR. SCHNEEBAUM (SUB)
USIA/GC - MR. SCHNEEBAUM (SUB)
DESIRED DISTRIBUTION
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UNCLAS STATE 069655

E.O. 11652: N/A

TAGS: ACLM, AFSP

SUBJECT: SUIT AGAINST U.S. GOVERNMENT BY MARIO PICCHI,
FORMER FSL EMPLOYEE OF USIS/ROME

REF: 4967

JOINT STATE/JUSTICE/USIA MESSAGE

1. DEPARTMENT OF JUSTICE, LEGAL ADVISER'S OFFICE AND USIA
GENERAL COUNSEL'S OFFICE ARE OF UNANIMOUS VIEW THAT DEFENSE
OF DIPLOMATIC IMMUNITY UNDER ART. 31 OF VIENNA CONVENTION
ON DIPLOMATIC RELATIONS INAPPROPRIATE IN THIS CASE. ART. 31
PROVIDES FOR THE PERSONAL IMMUNITIES OF DIPLOMATIC AGENTS
FROM THE CRIMINAL, CIVIL AND ADMINISTRATIVE JURISDICTION OF
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THE RECEIVING STATE. IN THE INSTANT SUIT, USG HAS BEEN
NAMED AS DEFENDANT, NOT AN INDIVIDUAL MEMBER OF MISSION
ENJOYING DIPLOMATIC IMMUNITY.

2. THIS CASE WILL BE DEFENDED ON GROUNDS THAT PLAINTIFF WAS
AN EMPLOYEE OF USG PERFORMING ESSENTIALLY DISCRETIONARY
FUNCTION; THAT EMPLOYMENT RELATION IS GOVERNED EXCLUSIVELY

BY PERSONNEL POLICIES AND PRACTICES PROMULGATED BY EMBASSY;
THAT UNDER ARTICLE 38, PARAGRAPH 2 OF VIENNA CONVENTION ITALY
MUST EXERCISE ITS JURISDICTION OVER NATIONALS ON STAFF OF

MISSION IN SUCH MANNER AS NOT TO INTERFERE UNDULY WITH
FUNCTIONING OF MISSION; AND THAT, IN CONSEQUENCE, THIS
PARTICULAR EMPLOYMENT RELATIONSHIP ESCAPES THE JURISDIC-
TION OF ITALIAN COURTS. FOREGOING DEFENSE (EVEN WITHOUT
ARTICLE 38 REFERENCE) WAS ACCEPTED AS VALID BY ITALIAN
SUPREME COURT IN ITS JUDGMENT OF NOVEMBER 25, 1971 IN THE
CASE OF MARIA DE RITIS V. USG. CASE HELD THAT AN ASSISTANT
LIBRARIAN EMPLOYED BY USIS IN NAPLES WAS A "PUBLIC
EMPLOYEE" OF USG, PERFORMING ESSENTIALLY GOVERNMENTAL
FUNCTIONS, AND EMPLOYMENT RELATIONSHIP WAS NOT SUBJECT TO
JURISDICTION OF ITALIAN JUDICIARY.

3. PLEASE PASS ABOVE TO DR. COSMELLI.
CHRISTOPHER

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Message Attributes

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